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Marc A. Levinson (California Bar No. 57613)
 Rachel Ragni (California Bar No. 214061)
 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 Sacramento, CA 95814-4497
 Telephone: (916) 447-9200
 Facsimile: (916) 329-4900
 Email: malevinson@orrick.com;
rragni@orrick.com

Bob L. Olson (Nevada Bar No. 3783)
 Anne M. Loraditch (Nevada Bar No. 8164)
 BECKLEY SINGLETON, CHTD.
 530 Las Vegas Boulevard South
 Las Vegas, NV 89101
 Telephone: (702) 385-3373
 Facsimile: (702) 385-5024
 Email: bolson@beckleylaw.com;
aloraditch@beckleylaw.com

*Attorneys for the Official Committee of Equity
 Security Holders of USA Capital Diversified Trust
 Deed Fund, LLC*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

OMNIBUS REPLY TO RESPONSES TO OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, TO CLAIMS ON EQUITY MISFILED AS CREDITOR CLAIMS

Date: January 3, 2007
 Time: 9:30 a.m.
 Courtroom: 1

The Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "Diversified Committee"), by and through its counsel, Orrick, Herrington Sutcliffe LLP, and Beckley Singleton, Chtd., hereby submits this Omnibus Reply to Responses

To Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Reply") in reply to the following pleadings filed in response to the Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Objection"):¹

- (1) Notice of Non-Opposition to Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Gage Response") [Docket No. 2212] – timely filed on December 19, 2006, by George J. and Miriam B. Gage and George J. Gage, Trustee for the George Gage Trust dated 10-8-99 (the "Gage Response")
- (2) Response to Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Bruce McGimsey Response") [Docket No. 2267] – late filed on December 26, 2006, by Bruce McGimsey
- (3) Response to Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Clark Response") [Docket No. 2268] – late filed on December 26, 2006, by Johnny Clark
- (4) Response to Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Sharon or Jerry McGimsey Response") [Docket No. 2269] – late filed on December 26, 2006, by Sharon and Jerry McGimsey
- (5) Response to Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim (the "Margaret McGimsey Response," together with the Bruce McGimsey Response, the Clark Response, and the Sharon or Jerry McGimsey Response, the "McGimsey Responses") [Docket No. 2270] – late filed on December 26, 2006, by Margaret B. McGimsey

¹ This Reply is also intended as a response to the facsimile from Robert J. and Lois Mae Scott, dated December 24, 2006, entitled "Response to: Notice of Hearing of Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Claims on Equity Misfiled As Proofs of Claim" (the "Scott Response") should the Court elect to consider it. Counsel for the Diversified Committee received the Scott Response via facsimile on December 26, 2006, well past the deadline for responding to the Objection, which expired on December 18, 2006, for those parties receiving notice of the Objection by mail pursuant to LR 9014.

1 This Reply is made and based on the pleadings, papers and records on file in the Chapter
2 11 Cases, and any evidence and oral argument that may be presented at the time of the hearing
3 on the Objection.

4 DATED this 28th day of December 2006.

5 BECKLEY SINGLETON, CHTD.

6 By /s/Anne Loraditch

7 Bob L. Olson (Nevada Bar No. 3783)
8 Anne M. Loraditch (Nevada Bar No. 8164)
530 Las Vegas Boulevard South
Las Vegas, NV 89101

9 Marc A. Levinson (California Bar No. 57613)
10 Rachel Ragni (California Bar No. 214061)
11 ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497

12 *Attorneys for the Official Committee of Equity*
13 *Security Holders of USA Capital Diversified Trust*
14 *Deed Fund, LLC*

15 **POINTS AND AUTHORITIES**

16 **I.**

17 **BACKGROUND**

18 1. On November 30, 2006, Beckley Singleton, Chtd. ("Beckley") and Orrick,
19 Herrington & Sutcliffe LLP ("Orrick," together with Beckley, "Committee Counsel") filed the
20 Objection to 111 of the 137 proofs of claim filed against USA Capital Diversified Trust Deed
21 Fund, LLC ("Diversified Fund" or "Debtor") on the basis that such claims are not creditor
22 claims but are, instead, claims on equity ("Claims on Equity") that were erroneously filed by
23 claimants who are Diversified Fund Members seeking recovery on their equity interests in the
24 Diversified Fund. A detailed listing of the Claims on Equity was attached to the Objection as
25 Exhibit 1.

26 2. Exhibit 1 to the Objection indicated the claim number, claimant, claim amount,
27 and proposed disposition for each of the Claims on Equity being objected to by the Diversified
28 Committee.

3. On November 30, 2006, nine (9) separate notices of hearing on the Objection, each bearing the names of several holders of Claims on Equity and detailing the deadline for responding to the Objection pursuant to the Court's local bankruptcy rules ("Local Rules"), were filed with the Court with each notice served upon the respective holders of Claims on Equity named in that particular notice and with each recipient's respective information highlighted with a highlighting pen.² Multiple notices of hearing on the Objection were filed and served in this manner to ensure that each claimant being objected to was made aware of such objection and also to specifically draw the recipient's attention to the nature of the objection to their claim.

4. Of the 111 Claims on Equity objected to in the Objection, only 6 responses were received by Committee Counsel and, of those, only 1 was timely filed.

II.

REPLY

A. The Gage Response.

The Gage Response is the only response timely filed with the Court. The representations made by George and Miriam Gage in the Gage Response resolve the Diversified Committee's objection to Claims 91-1 and 92-1. Accordingly, the Diversified Committee requests that the Court deem Claims 91-1 and 92-1 as Allowed Proofs of Interest and disallow Claims 111-1 and 112-1 in their entirety as duplicative claims.

B. The McGimsey Responses.

The McGimsey Responses were not timely filed before the deadline for doing so, under the Local Rules, expired. Nevertheless, should the Court elect to consider the McGimsey Responses, the Diversified Committee replies as follows: Each of the McGimsey Responses seeks to elevate its respective claim (together, the "510(b) Claims"), to a position that is on a par with one another but higher in priority than all other holders of equity interests in the Debtor's chapter 11 case. In reality, the 510(b) Claims and the holders of those claims are in

² Those parties in interest receiving notice through the Court's ECF system, as well as parties requesting special notice, received copies of all 9 notices.

1 the same position as every other member of the Diversified Fund holding an equity interest –
2 that is, they invested money in a limited liability company through which trust deed
3 investments were to be made.

4 The McGimsey Responses fail to distinguish the 510(b) Claims from the interests of all
5 of the other investors who placed their trust in the Debtor's insiders and purchased (and
6 continue to own) shares in the Diversified Fund entity. These holders of the 510(b) Claims are
7 not also creditors of Diversified Fund. As such, all of the 510(b) Claims – 90-1, 93-1 through
8 95-1, 129-1 through 131-1, and 136-1 – should be disallowed in their entirety as duplicative of
9 identical Proofs of Interest already filed by these claimants.

10 At the very least, Claims 90-1, and 93-1 through 95-1 should be subordinated to the
11 same level as all other equity interest holders in Diversified Fund, pursuant to controlling law in
12 this jurisdiction. In re Betacom of Phoenix, Inc., 240 F.3d 823, 829 (9th Cir. 2001).
13 Conversely, if the Court is persuaded by the McGimsey Responses that the 510(b) Claims
14 ought not to be disallowed or subordinated, then the Court must accordingly raise all other
15 equity interests in Diversified Fund up to create an entire creditor class where none otherwise
16 exists.

17 In either instance, the Proofs of Interest filed by these claimants should be disallowed,
18 as duplicative of Claims 90-1, and 93-1 through 95-1, and in addition Claims 129-1 through
19 131-1, and 136-1, which are also duplicative of these claimants' interests, should be disallowed
20 in any case. Nowhere in any of the McGimsey Responses do the claimants assert that they have
21 more than one (1) respective investment account through Diversified Fund, and they should not
22 be given any more interests than they actually have. The simplest approach is to simply
23 disallow all of the 510(b) Claims, which results in the Proofs of Interests already on file for
24 these claimants to stand as Allowed Proofs of Interest.

25 **C. The Scott Response.**

26 As mentioned at footnote 1 above, Committee Counsel received the Scott Response by
27 fax but not before the December 18, 2006, deadline for filing responses to the Objection had
28 passed. In fact, it does not appear from the docket that the Scott Response was filed with the

1 Court at all but merely transmitted to counsel. However, should the Court wish to consider it, a
2 true and correct copy of the Scott Response is attached hereto as **Exhibit A** for the Court's
3 convenience. In short, the Scott Response asserts that interest accrued post-petition from April
4 to November 13, 2006, at the rate of twelve percent (12%) per annum, totaling \$5,352.98,
5 should be added to the Scotts' equity interest in Diversified Fund equal to 72,070.98 shares, or
6 \$72,070.98.

7 Only creditors holding allowed secured claims are entitled to interest on their claims, as
8 set forth in Bankruptcy Code Section 506. 11 U.S.C. § 506(b). The Scotts are not secured
9 claimants. They are not even creditors. The Scotts purchased shares of the Diversified Fund
10 limited liability company and, consequently, hold equity interests in Diversified Fund. As
11 equity interest holders, the Scotts are not entitled to interest, post-petition or otherwise, on their
12 ownership in Diversified Fund. Accordingly, the Diversified Committee requests that the Court
13 overrule the Scott Response and deem the Scotts' equity interest in the amount of \$72,070.98
14 an Allowed Proof of Interest in Diversified Fund.

15 **III.**

16 **CONCLUSION**

17 For the reasons set forth herein, the Diversified Committee respectfully requests that the
18 Court enter an order (i) overruling the McGimsey Responses and the Scott Response, and (ii)
19 sustaining the Diversified Committee's objections to the Claims on Equity according to the
20 dispositions proposed in this Reply and in the Objection (except for the proposed disposition of
21 Claims 84-1, 85-1, 118-1, and 119-1, as more fully explained in the Response to Reply to
22 Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital

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1 Diversified Trust Deed Fund, LLC, to Wrong Debtor Claims Misfiled Against USA Capital
2 Diversified Trust Deed Fund, LLC, filed concurrently herewith).³

3 DATED this 28th day of December 2006.

4 BECKLEY SINGLETON, CHTD.

5 By: 

6 Bob L. Olson (Nevada Bar No. 3783)
7 Anne M. Loraditch (Nevada Bar No. 8164)
8 530 Las Vegas Boulevard South
9 Las Vegas, NV 89101

10 Marc A. Levinson (California Bar No. 57613)
11 Rachel Ragni (California Bar No. 214061)
12 ORRICK, HERRINGTON & SUTCLIFFE LLP
13 400 Capitol Mall, Suite 3000
14 Sacramento, CA 95814-4497

15 *Attorneys for the Official Committee of Equity*
16 *Security Holders of USA Capital Diversified Trust*
17 *Deed Fund, LLC*

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26 ³ The Diversified Committee inadvertently included Claims 84-1, 85-1, 118-1 and 119-1 in the Objection
27 when the objection to these four claims was, instead, based upon their having been filed as Wrong Debtor Claims.
28 As a result, these claims should have been included in the Omnibus Objection of the Official Committee of Equity
Security Holders of USA Capital Diversified Trust Deed Fund, LLC To Wrong Debtor Claims Misfiled Against
USA Capital Diversified Trust Deed Fund, LLC [Docket No. 1892], also filed November 30, 2006.

EXHIBIT A
SCOTT RESPONSE

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December 04, 2006

From: Robert J. and Lois Mae Scott

2100 Plaza Way #101

Walla Walla, WA 99362

Response to: Notice of Hearing of Omnibus objection of the Official Committee
of Equity Security Holders of USA Capital Diversified Trust
Deed Fund (OTDF) LLC

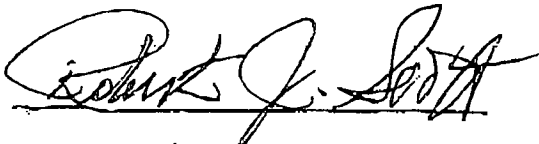
Pleading

We, Robert J. and Lois Mae Scott, in response to the above OTDF
Committee's objection hold and maintain claim to seventy-two thousand
seventy dollars and ninety-eight cents, \$72,070.98.

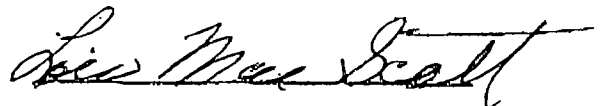
The amount stated in the Omnibus objection, Exhibit 1, included
interest accrued from April to November 13, 2006 at twelve percent,
12.50, for a total claim of seventy-seven thousand, four hundred
twenty-three dollars and ninety-six cents, \$77,423.96.

We concede the interest accumulation amount of five-thousand
three hundred and fifty-two dollars and ninety-eight cents, \$5,352.98,
and maintain claim to the seventy-two thousand seventy dollars and
ninety-eight cents, \$72,070.98.

Respectfully submitted this 24th day of December 2006.



Robert J. Scott



Lois Mae Scott